

## **REMARKS**

Reconsideration is respectfully requested. Claims 1-22 are pending. Claims 1, 5, 11, 12 and 22 are amended.

Applicants have not dedicated or abandoned any unclaimed subject matter and moreover have not acquiesced to any rejections made by the Patent Office. Applicants reserve the right to pursue prosecution of any presently excluded claim embodiments in future continuation and/or divisional applications.

### **Claim Amendments**

Claims 1, 5, 11, and 12 are amended for technical clarity.

Claim 22 is amended to correct antecedent basis.

### **Priority**

This application is a continuation of U.S.S.N. 09/515,582, now patented. The specification has been amended to reflect the issued patent.

### **Double Patenting' Rejection**

Claims 1-22 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-16 of U.S. Patent No. 6,861,414. A terminal disclaimer directed to 6,861,414 is enclosed herewith. Applicants respectfully request entry of this terminal disclaimer, withdrawal of this rejection, and allowance of Claims 1-22.

### **Claim Objections**

Claims 1, 5, and 11 stand objected to because of the wording "a transplant organ." Applicants have amended Claims 1, 5, and 11 to recite "an organ transplant" in accordance with the Examiner's suggestion, and withdrawal of this objection is respectfully requested.

### **Claim Rejection Under 35 U.S.C. § 112**

Claims 1-22 are rejected under 35 U.S.C. § 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Specifically, the Examiner alleges that "modulating" encompasses both enhancing and decreasing heme oxygenase levels, while the disclosed

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method step appears to increase the HO level, and thus the recited method step does not correlate with the preamble. In accordance with the Examiner's suggestion, Claims 1 and 12 have been amended to recite "increasing" in the preamble. As such, Applicants respectfully request the rejection to be withdrawn.

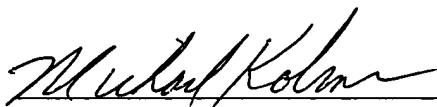
Claim 22 stands rejected on the basis that it recites the limitation "said viral vector" and there is insufficient antecedent basis for this limitation. Claim 22 has been amended to recite "said adenoviral vector". As such, Applicants respectfully request the rejection to be withdrawn.

### CONCLUSION

Applicants respectfully submit that the claims are now in condition for allowance and early notification to that effect is respectfully requested. If the Examiner feels there are further unresolved issues, the Examiner is respectfully requested to phone the undersigned at (415) 781-1989.

Respectfully submitted,  
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